

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION**

WRIT PETITION NO. 3995 OF 1990.

Pen Shikshan Mahila Samiti.

... Petitioner.

V/s.

1. Mrs. Shradha Shriram Thakue.

2. Shri D.S. Jagtap,
Presiding Officer,
School Tribunal, Pune.

... Respondents.

Shri Neel Helekar with Mrs. Anjali Helekar for the
petitioner.

Shri Anita Agarwal with Ms. Priyana C. Mehta for
respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 19.11.2005.

ORAL JUDGMENT:

. This petition is directed against the
judgment and order dated 9.7.1990 passed by the
School Tribunal, Pune, setting aside the order of
termination and directing reinstatement of the
respondent No.1 with backwages.

The facts:

2. The facts giving rise to the present
petition in nutshell are that respondent No.1 was
appointed as Assistant Teacher vide order dated
4.6.1987 for the Academic Year 1987-88 with a
specific condition that without assigning any reason
her services can be terminated at any time during

the academic year; if her services were found not necessary.

3. The respondent No.1 after joining the duty as per appointment order executed an undertaking in favour of the management agreeing therein that her services would be liable to be terminated without any prior intimation and/or without assigning any reason. She agreed not to object to such action of the management.

4. The respondent No.1 during the period of her employment was served with two memos; one dated 18.1.1988, explaining her, how to teach the students; and another letter dated 3.5.1988 bringing to her notice the lapses committed by her as a teacher during the period of her employment. She was put on notice that the lapses notified may warrant a serious action against her. Three months before commencement of the new academic year respondent No.1 was served with a notice dated 30.3.1988, intimating her that with the closure of the current academic year i.e. w.e.f. 4th June, 1988 her appointment as Assistant Teacher in the petitioner-school shall come to an end. With the closure of 4th June, 1988 services of the respondent No.1 were treated as terminated.

5. Being aggrieved by the order of termination

dated 30.3.1988, respondent No.1 preferred an appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for short) to the School Tribunal, Pune. The challenges to the notice or order of termination set up were on the following 3 counts:

(a) That her appointment was in a clear/permanent vacancy and was on probation for a period of two years from 5.6.1987.

(b) That her work/ behaviour was satisfactory during the tenure and there was hardly any reason for the management to resort to terminate her services.

(c) That her services were not liable to be terminated by the impugned notice/order of termination dated 30.3.1988.

6. Thus, respondent/appellant before the Tribunal contended that the impugned notice/order of termination of service is illegal and invalid as such the same is liable to be set aside and she be reinstated in service with backwages.

7. On being notice, petitioner/respondent-management appeared before the Tribunal and filed their written statement to resist appeal contending that the appellant / respondent No.1 herein; was appointed on temporary basis. She was not appointed on probation. Her behaviour/ performance during her tenure as Assistant Teacher was not satisfactory. Consequently, her services were terminated with the close hours of 4.6.1988. It was, thus, sought to be canvassed that action of the management was legal and valid.

. The Tribunal heard both the parties and action of the management was faulted in the following words:

". The appellant, being a probationer, her services were liable to be terminated under section 5(3) of the Act of 1977 on the ground that her work/ behaviour during her probation period was not satisfactory. The management has failed to prove that her behaviour during the relevant period was not satisfactory. Therefore, her services were not liable to be terminated under section 5(3) of the Act, under which management of the respondent had acted while terminating the appellant's services. The impugned order of the management in terminating the appellant's services is, therefore, rendered illegal and invalid. I, therefore, accept the contention of the appellant, negative that of the respondent and hold that the impugned notice/order of termination of the appellant's services is not legal and valid, in consequence of which I answer this point in the negative."

8. The appeal filed by the petitioner was belated. However, for the reasons stated in the order delay was condoned. Appeal was treated as filed within time. The Tribunal allowed the appeal and directed the management of the school-petitioner herein; to reinstate the respondent No.1 with backwages from the date of termination till reinstatement.

9. Being aggrieved by the said order, the present petition is filed by the management invoking jurisdiction of this Court under Article 227 of the Constitution of India.

Submissions:

10. Learned Counsel appearing for the petitioner submitted that appointment of respondent No.1 was for a fixed period; that too; on temporary basis. Her services were found not satisfactory. She was not found suitable for the post of Assistant Teacher. Consequently, her services were terminated after giving her two months' advance notice. He relied upon judgment of the Apex Court in the case of **Hindustan Education Society vs.Sk. Kaleem Sk.Gulab Nabi and ors. (1997) 5 SCC 152** to urge that if appointment is purely temporary for a fixed period with a specific term that services are liable

to be terminated without any notice, and if the action is taken in consonance with the terms of the appointment order, then such action cannot be faulted with. According to him, the Apex Court in the case of Hindustan Education Society (supra) has upheld such similar action of the management. Learned Counsel has also placed reliance on the judgment of the Division Bench of this Court in the case of **Anna Manikrao Pethe vs. The Presiding Officer, School Tribunal, 1998 (4) Bom.C.R. 565,** wherein Division Bench following the judgment in Hindustan Education Society (supra) ruled that the temporary appointee has no right to post as such he cannot claim right to continue in service. He further placed reliance on judgment of the Division Bench of this Court in the case of **Chairman/President, Rotary Charitable Trust, Ambernath and anr. vs. Nagendra Pratap Singh & anr. 2004 (1) Mh.L.J. 191,** wherein again judgment of the Apex Court in the case of Hindustan Education Society(supra) was relied upon to hold that appointment for a fixed period on temporary basis cannot be said to be permanent even if appointee is allowed to continue till the end of academic year.

11. Learned Counsel for the petitioner, alternatively, submits that assuming without admitting that respondent No.1 was appointed on

probation period, even then her services were terminated before completion of her probation period i.e. during the period of 8 months from the date of appointment. Relying on section 5(2) of the Act, he submitted that the petitioner cannot claim any right to continue in view of the fact that the management found her services unsatisfactory for the post to which she was appointed. He placed reliance on the judgment of the Apex Court in the case of **Bharatiya Gramin Punarrachana Sansthas vs. Vijay Kumar and ors. (2002) 6 SCC 707**; wherein the appointee was appointed only for one year i.e. for 1987-88. He was not put on probation. His order of appointment, specifically, mentioned that the services of the appointee were liable to be terminated without any prior notice. Appointee had given an undertaking to the effect that he shall not claim any right to post. The Apex Court relying upon provisions of sub-section (2) of section 5 of the Act ruled that since services were terminated before completion of 2 years, the action of termination resorted to by the school management was legal and valid. The learned Counsel appearing for the petitioner, thus, submits that in view of the ratio of the judgment in the case of **Bharatiya Gramin P.S. (Supra)**, the impugned order cannot stand to scrutiny of law and is liable to be set aside.

12. Per Contra, Mrs. Agarwal, learned Counsel appearing for respondent No.1 submitted that termination cannot be said to be legal and valid. She submits that termination is in breach of Rule 28 of the MEPS Rules. The contention is that respondent No.1 was appointed on probation. Her services came to be terminated by giving one calendar month's notice. No notice of termination could have been given during vacation. According to her, notice covers part of vacation period. Reliance is placed on the judgment of this Court in the case of Rotarty Charitable Trust (supra) in support of the contention raised and extracted herein above. This is the solitary ground canvassed before me.

Consideration:

13. Having heard rival parties, at the outset, it must be mentioned that the order of the Tribunal text of which is extracted in para 4 above, holding that the management has failed to prove that behaviour of the respondent No.1 during the relevant period of her employment was not satisfactory is absolutely incorrect. As a matter of fact, the management had issued two memos/notices dated 18.1.1988 and 3.5.1988 informing the employee that her work was not found satisfactory. Both these

documents are not in dispute. The unsatisfactory work has been cogently established by the petitioner-school management.

14. So far as contention of respondent No.1 that the order of termination is in breach of Rule 28 is concerned, the same also cannot be accepted for two reasons. Firstly, this contention was not raised before the Tribunal. Secondly, respondent No.1 was never appointed on probation. Even assuming that she was appointed on probation, no fault can be found with the order of termination for more than one reasons: Firstly; because respondent No.1 was served with memo putting her on notice that her work was found to be unsatisfactory; and secondly, 2 months advance notice was given though Rule 28 contemplates only one month's notice. Thirdly, respondent No.1 was permitted to enjoy full vacation. The notice period did not come to an end during vacation. Therefore, defences sought to be raised by respondent No.1 to defeat this petition cannot be accepted. In view of the judgment of the Apex Court in the case of Hindustan Education Society (supra) and followed by this Court in two judgments referred to hereinabove, no fault can be found with the order of termination passed by the petitioner-school-management. The impugned order of the School Tribunal is absolutely perverse and

unsustainable in law. The same is, therefore,
liable to be quashed and set aside.

15. In the result, impugned order is set aside.
Petition is allowed. Rule is made absolute in terms
of prayer clause(a) with no order as to costs.

(V.C DAGA,J.)